

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

AMEREN ILLINOIS COMPANY	)	
d/b/a Ameren Illinois,	)	
Petitioner	)	Docket 12-0244
	)	
Smart Grid Advanced Metering Infrastructure	)	
Deployment Plan	)	
	)	

**AMEREN ILLINOIS COMPANY’S MOTION TO STRIKE STAFF’S PROPOSED  
RATE IMPACT MODIFICATION TO THE AMI PLAN**

Pursuant to 83 Ill. Adm. Code Sec. 200.190, Ameren Illinois Company d/b/a Ameren Illinois (AIC) respectfully moves for issuance of an order striking Staff’s recommendation that the Commission modify AIC’s Advanced Metering Infrastructure Plan (AMI Plan or Plan) to require AIC to disclose projected customer rate impacts of AMI deployment. No Staff witness – indeed, no party to this proceeding – presented testimony in support of this proposed rate impact modification to the AMI Plan. Rather, this proposed modification to the Plan was presented for the first time in Staff’s post-hearing brief, after the record was marked heard and taken. Consequently, Ameren Illinois was denied the opportunity to respond to Staff’s proposed modification in testimony and to cross-examine Staff witnesses – or any adverse witness – on the merits of Staff’s proposed modification. It would be a denial of due process for the Commission to give any weight to Staff’s proposed modification in its final decision in this proceeding. Accordingly, the Commission should strike Staff’s proposed modification.

The due process requirements of administrative proceedings include “the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence.” Gigger v. Bd. of Fire & Police Comm’rs of City of East St. Louis, 23 Ill. App. 2d 433, 439 (4th Dist 1960); see also Abrahamson v. Ill. Dep’t of Prof’l Reg., 153 Ill. 2d 76, 95 (1992); Balmoral

Racing Club, Inc. v. Ill. Racing Bd., 151 Ill. 2d 367, 400-01 (1992) (“cross-examination is required in order to ensure that due process requirements are met”). The Commission consistently has found that consideration of evidence, without allowing an opposing party the opportunity to cross-examine or respond, would contravene due process. See, e.g., Order, Docket No. 02-0170, 2003 Ill. PUC LEXIS 682, Aug. 6, 2003, at \*35-36 (no consideration given to expert qualifications submitted for the first time in reply brief on exceptions); Order, Docket No. 00-0260, 2001 Ill. PUC LEXIS 871, Sept. 12, 2001, at \*20-21 (auditor’s participation in proceeding critical to afford parties opportunity to present and cross-examine witnesses relative to the issue of tracking merger related costs in order for due process concerns to be satisfied); Order, Docket No. 92-0121, 1995 Ill. PUC LEXIS, Apr. 12, 1995, at \*25-26 (no consideration given to proposal offered after evidentiary hearing concluded without benefit of fundamental right to cross-examination by the other parties); Order, Docket No. 94-0066, 1995 Ill. PUC LEXIS 176, Feb. 23, 1995, at \*266-268 (late introduction of Staff’s new modifications proposed for the first time in brief, which were not tested in cross-examination and which no party had the opportunity to address for the record, would violate fundamental fairness and abridges other parties’ due process).

In this proceeding, three Staff witnesses testified on various, but discrete aspects of Ameren Illinois’ AMI Plan: Dr. Eric Schlaf testified on whether the Plan satisfied informational and technical requirements for an AMI Plan under Section 16-108.6 of the Public Utilities Act (Act); Dr. David Brightwell testified on whether the Plan was cost beneficial as defined under the Act; and Dr. James Zolnierrek testified on two modifications to the Plan concerning the Plan’s consistency with AIC’s Multi-Year Performance Metrics (Metrics Plan) pending Commission approval in Docket No. 12-0089 and AIC’s utilization of its existing radio frequency (RF)

network in its AMI deployment. Each of these Staff witnesses submitted direct testimony, to which AIC had the opportunity to respond in rebuttal testimony, and each of these witnesses was made available for cross-examination at the evidentiary hearing in this proceeding.

In its post-hearing brief however, Staff proposed a new modification to the Plan. For the first time in brief, Staff recommended the Commission modify the Plan to require AIC to disclose the projected rate impact of the Plan for AIC's residential customers. (See Staff Brief, Docket 12-0244, dated May 3, 2012, pp. 9, 23-26.) Specifically, Staff recommends that AIC's AMI Plan be modified to disclose the projected rate impact for a typical residential customer using 10,000 kWh annually for the period 2012-2031. (Id.) Staff further recommends that the Commission order AIC's annual reports regarding its progress in implementing the AMI Plan to include historical AMI costs, projected AMI costs, AMI costs allocated to gas operations, and projected monthly rates and rate impacts. (Id., p. 26.) No Staff witness – and no party to this proceeding – presented this recommended modification in its direct testimony.<sup>1</sup> As a result, Ameren Illinois did not have the opportunity to respond to this proposed Plan modification in rebuttal testimony and did not have the opportunity to test the merits of this proposed Plan modification in cross-examination of any party witness. Due process requires the Commission to give no consideration to this late-provided and new proposal. Accordingly, AIC requests that the Commission strike the portions of Staff's Brief that discuss this proposal. Specifically, the Commission should order Staff to re-file its post-hearing Brief, removing the second modification listed on page 9 and the entirety of Section III.D., "Cost-Benefit Requirement."<sup>2</sup>

Staff's Brief notes that Staff inquired in discovery as to the impact of the AMI Plan on individual rates. (Staff Brief, p. 24.) AIC indicated its position that Section 16-108.6 of the

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<sup>1</sup> On page 9 of its Brief, Staff provides an (*Id.*) citation, without pinpoint, in support of this proposed modification, suggesting that Dr. Brightwell's direct testimony provides support for this modification. It

<sup>2</sup> Staff's Brief did not follow the agreed-upon outline, renaming Section III.C., "Cost Benefit Analysis," where Dr. Brightwell's recommendations are discussed, and adding Section III.D.

Act does not require an AMI Plan to contain projected impacts on individual rates. Staff also inquired in discovery whether AIC would be willing to include historical and projected customer impact of AMI investment. (AIC response to Staff Data Request SRK 3.02, included in Staff Group Cross Ex. 1.) AIC declined to agree. That Staff sent data requests to AIC exploring whether the Plan provides residential rate impacts and AIC's willingness to provide such rate impacts, and then cross-examined AIC's witnesses at hearing on them, is not sufficient notice and opportunity to address Staff's new proposal now on brief that AIC's Plan must contain such information. Staff's new "rate impact" modification should have been proposed in testimony, not on brief. It would be fundamentally unfair and in violation of AIC's due process, if a party could participate in a proceeding but wait until after the record has been marked heard and taken to issue new expert opinions and propose new recommendations that were not offered in testimony by that party or any other party to the proceeding. But that is exactly what happened here. If Staff – or any party to a proceeding – has evidence to offer or a proposal to make, that evidence or proposal should be offered in testimony for the record where the witness is subject to cross-examination.

Staff's Brief cites to the last paragraph of AIC's AMI Petition, where the Company asks for "such other and further relief as deemed equitable and just," as tenuous support for offering its new proposal at this juncture in the proceeding. (Staff Brief, p. 25.) But that request in AIC's petition does not give the parties license to encourage the Commission to adopt new modifications to the AMI Plan for the first time on brief. AIC was entitled to respond to the proposed modification in rebuttal testimony, or explore the merits of the proposal in cross-examination of Staff's witnesses. It did not have that opportunity. Thus, Staff's "rate impact" modification to the Plan should be given no weight and the sections of Staff's Brief concerning this modification should be removed.

Dated: May 7, 2012

Respectfully submitted,

Ameren Illinois Company

By: /s/ Mark A. Whitt

One of its attorneys

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**CERTIFICATE OF SERVICE**

I, Mark Whitt, certify that on May 7, 2012, I caused a copy of the foregoing MOTION TO STRIKE STAFF'S PROPOSED RATE IMPACT MODIFICATION TO THE AMI PLAN to be served by electronic mail to the individuals on the Commission's Service List for Docket No. 12-0244.

/s/ Mark Whitt  
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